

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTONIO PAYERO and ADAM :  
MALDONADO, each individually and on :  
behalf of all others similarly situated, :  
Plaintiffs, :

v. :

MATTRESS FIRM, INC., :  
Defendant. :

**ORDER**

21 CV 3061 (VB)

-----X  
Defendant having moved to dismiss the first amended complaint pursuant to Rule 12(b)(1) for lack of standing and Rule 12(b)(6) for failure to state a claim (Doc. #16), it is hereby ORDERED:

1. The Rule 12(b)(1) motion is DENIED.
2. The Rule 12(b)(6) motion is GRANTED with respect to the fraudulent omission and unjust enrichment claims, and DENIED with respect to the New York General Business Law §§ 349 and 350 claims, as well as the claim for breach of implied warranty and violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301.
3. A telephone conference is scheduled for **January 28, 2022, at 10:15 a.m.**, at which time the Court will issue a bench ruling explaining the basis for its decision. This conference shall also serve as an initial conference in this matter, for which the Court will separately issue a Notice of Initial Conference. Counsel shall use the following information to connect by telephone:

**Dial-In Number:** (888) 363-4749 (toll free) or (215) 446-3662

**Access Code:** 1703567

4. By January 21, 2022, counsel shall file on the ECF docket their proposed Civil Case Discovery Plan and Scheduling Order, the blank form for which will be attached to the Notice of Initial Conference.

5. Defendant shall file its answer by January 21, 2022.

6. The Clerk is instructed to terminate the motion. (Doc. #16).

Dated: January 7, 2022  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge